of Puerto Rico, April 3, 1940, R. 98-100] are not officially reported. The "*Per Curiam*" opinion of the Circuit Court of Appeals for the First Circuit (R. 114-118) is in 116 F. (2d) 379 (Advance Sheets).

JURISDICTION

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

The judgment of the Circuit Court of Appeals was entered on December 18, 1940 (R. 118-119). The time within which to apply for a writ of *certiorari* to this court was extended by order of MR. JUSTICE FRANKFURTER, until and including April 17, 1941 (R. 119), and afterwards, by another order of MR. JUSTICE FRANKFURTER, until and including April 26, 1941 (R. 120).

QUESTIONS PRESENTED

The questions here presented are stated in the Petition (*ante*, pp. 9-12).

STATUTES INVOLVED

These are indicated in the Petition (*ante*, p. 14), and in Appendix III (*infra*, pp. 49-58).

STATEMENT

A statement of the case is in the Petition (*ante*, pp. 1-9); and a "Chronology", indicating the sequence of the statutes and of proceedings here involved, is in Appendix IV (*infra*, pp. 59-65).

SPECIFICATIONS OF ERRORS TO BE URGED

These are indicated under the headings "Questions Presented" and "Petitioner's Position" in the Petition (*ante*, pp. 9-12 and 13-14).

SUMMARY OF ARGUMENT

The argument is summarized under the headings "Petitioner's Position" and "Reasons for Granting the Writ" in the Petition (*ante*, pp. 13-14 and 14-15).

ARGUMENT

Introductory

It may be agreed that the foreclosure decree of September 18, 1939, was final and appealable as the Circuit Court of Appeals says it was (R. 116, 118; 116 F. (2d), at pp. 380, 381), in so far as it determines the relative priorities of the mortgages and of the deferred real estate taxes; and that after the expiration of the May term, 1939, at which it was entered, the District Court would have to be regarded as without power to re-open or to reconsider that question, either when considering whether to approve the receiver's final report, or at any other time; **unless** upon either or both of two grounds, both of which, however, exist here: FIRST, That the power was reserved by the last sentence of the final paragraph "O" of the decree; and, SECOND, That in respect of this question there existed "ERROR APPARENT" on the face of the decree; inasmuch as, on its face it was unquestionably in direct violation of the statute of Puerto Rico,—a statute whose validity had never been questioned at all, except by the former orders of that same District Court itself in the *Federal Land Bank* litigation, and whose validity was shortly afterwards directly established by the judgments of the Circuit Court of Appeals reversing the District Court in those *Federal Land Bank* cases.

The District Court had the power, on both of these grounds, to re-open the question, and to modify its decree, at its next succeeding term. Possessing the power, it was its plain duty to do so; and to conform its decree to the statute and to the decision of the Circuit Court of Appeals. The power existed throughout the whole of that term, the District Court's November, 1939, term. It was not exhausted by the January 31, 1940, order refusing to re-open the decree; but was still in existence throughout the term, and should have been exercised upon the objections of The People of Puerto Rico

to approval of the receiver's report final and his discharge. The abortive attempt of The People of Puerto Rico to appeal from the January 31, 1940, order [10] is important only as indicating that The People never acquiesced in the court's action. The fact that The People did not appeal from the original foreclosure decree of September 18, 1939, is indicative of their understanding that the final paragraph "O" continuing "the present term" for "the purpose of making any further order or decree in relation to any matter arising in connection with this decree" (R. 85) effectively reserved the District Court's power in this respect, awaiting the decision in the *Federal Land Bank* cases, then still undecided in the Circuit Court of Appeals.

POINT I

The final sentence of the concluding paragraph "O" of the foreclosure decree of September 18, 1939, effectively reserved to the District Court the power at its succeeding term to reopen and to reconsider the provisions of the decree with reference to the relative priorities of the mortgages and the deferred real estate taxes.

A. The language of the final sentence of the decree, taken literally, undoubtedly goes to this extent. The sentence reads (R. 85; *ante*, p. 4):

> "For the purpose of making any further order or decree in relation to any matter arising in connection with this decree, or any sale thereunder, the present term of this court is continued."

It will be observed that there is in this wording nothing specifically tying this sentence up to the preceding sentence of the paragraph; or to anything else limiting the literal wording of this sentence itself. For example, it

---

[10] Notice of appeal filed one day too late; and appeal therefore dismissed by the Circuit Court of Appeals [Circuit Court's opinion, R. 117; 116 F. (2d) at p. 381]. *Confer*, Footnote 6, *ante*, p. 8.

does not contain any word like "such", or anything of that kind referring back, or tying it to the preceding sentence of the paragraph. It does not say "in relation to any *such* matter"; but "*in relation to any matter arising in connection with this decree*". On its face, it stands independent, unlimited.

B. In construing this sentence of the decree, as well as the whole decree, **the ordinary rules of construction must be borne in mind.** Of course it is to be construed in connection with the context; but the other familiar rules of construction are to be remembered also; among them that: (a) In construing any document, whether a contract or will or decree of a court, the situation of the parties at the time, and the surrounding circumstances, so far as they appear in the record, are to be considered. We are to put ourselves, so far as possible, into the shoes of the parties as they stood at the time. And (b) an endeavor is to be made to give effect to every word and phrase. Nothing is to be disregarded to which, reasonably, effect may be given, in arriving at the true intention of the parties, as shown on the face of the writing [here, of the decree].

C. Thus construing this final sentence of this decree in accordance with these and the other established rules of interpretation, and in connection with the preceding sentence of the final paragraph "O",—and with the entire decree and the whole record in this case,—it is believed that, clearly, **the last sentence is to be treated as independent of the preceding sentence, and as meaning exacting what it literally says.** That is to say that, just as it reads, without any limitation, "For the purpose of making *any further order or decree* in *relation to any matter* arising in connection with this decree, or any sale thereunder, *the present term* of this court *is continued*" (*Italics supplied*). That language is, of course, broad enough on its face to reserve the power to reconsider the provisions of the decree with relation to the relative priorities of the mortgages and the deferred taxes.

D. Placing ourselves in the shoes of the parties as they stood at the time, that would seem to be the purpose of this final sentence; that it should stand by itself; should mean exactly what it says; and should be effective to reserve the court's power to deal, afterwards, "with any matter arising in connection with this decree", including this question of tax priorities.

It must be borne in mind in this connection that the District Court in that decree was deliberately disregarding the statutes of Puerto Rico, the Act of July 16, 1936, as amended by that of May 13, 1937, as well as the earlier Act of August 19, 1933.[11] In thus directly disregarding the plain provisions of the Puerto Rican statutes, which expressly gave priority to the deferred taxes (Sec. 5, Act of July 16, 1936; and Sec. 5, Act of August 19, 1933, in connection with the final *Proviso* of Sec. 2, Act of July

---

[11] "Conclusions of Law", "V-(E)"; R. 72-73; in connection with "Findings of Fact" 19 (a), (c), (d) and (f), and 21 (c), (e), and (i), and related findings; R. 61-68. The District Court expressly holds ("Conclusions of Law", "V-(E)", *supra*, R. 72-73):

> "The People of Puerto Rico did not acquire a lien on the properties of the community and of the corporation, or any of them, superior to nor having preference and priority over the mortgage liens of complainant described in findings 6, 8, 10, 12 and 14 hereof, and referred to in these conclusions, by virtue of the deferment of payment of the unpaid property taxes assessed on said properties for the fiscal years 1928-29 to 1934-35, inclusive, pursuant to Law No. 23 of the Legislature of Puerto Rico, approved July 16, 1936, as amended by Law No. 122, approved May 13, 1937; nor did The People of Puerto Rico acquire a superior lien having preference and priority over said mortgage liens by virtue of the deferment of the payment of the real property taxes assessed on said properties for the fiscal years 1928-29 to 1932-33, inclusive, pursuant to Law No. 10 of said Legislature approved August 19, 1933.

16, 1936; Appendix III, *infra*, pp. 52-53; 50, 52), without any argument or discussion in the present case,[12] the District Court was manifestly simply following its own earlier rulings in the *Federal Land Bank* cases, February 27, and March 10, of the same year 1939 (Appendix I, *infra*, pp. 38-41, and 36-38), appeals from which were then pending, undecided, in the Circuit Court of Appeals for the First Circuit [filed there May 1, 1939; Appendix I, *infra*, p. 35].

It is not conceivable that either the Judge of the District Court or the parties did not have the pendency of those *Federal Land Bank* cases in the Circuit Court of Appeals in mind, at the time of the entry of the foreclosure decree in this case. The Act of the Legislature authorizing deferment of past due real estate taxes, and preserving the government's priority in the lien of the deferred taxes, was an important statute of wide application. The District Court itself had held it invalid in those *Federal Land Bank* cases as in violation of the federal Constitution and the federal Organic Act,—as impairing the obligation of the mortgage contracts. It does not appear that any other court had ever challenged the validity of the statute. The District Judge had, himself, under the old practice then still in force in Puerto Rico,[13] necessarily allowed the appeals in both those cases by his orders, as appears from the certified copy of the transcript of the record in those *Federal Land Bank* cases in the Circuit Court of Appeals, filed in this Court with this Petition for Certiorari [Order, March 22, 1939, Transcript, p. 25; Order, March 22, 1939, Transcript, p. 59, in the two cases, respectively].

---

[12] "Conclusions of Law", R. 72-73, quoted, *ante*, Footnote 11.

[13] The Federal Rules of Civil Procedure did not go into force in Puerto Rico until March 1, 1940 [Act of Congress of February 12, 1940, Public 414, 76th Congress, effective March 1, 1940, c. 25, 54 Stat. 22, extending the Rules of Civil Procedure to the United States District Court for Puerto Rico.

E. In that situation, in view of the fact that this important question of federal law was then pending undecided in the Circuit Court of Appeals upon the appeals from the District Court's own decisions in the *Federal Land Bank* cases, and that a reversal of his decisions in those cases, and an upholding of the statute by the Circuit Court of Appeals, would necessarily vitally affect the decree in the present case, **it was the plain duty of the District Court to reserve power to modify the decree in case of such reversal,** so as to be able to conform, in that event, to the statutory law of Puerto Rico [*Confer, Omaha El & P. Co.* vs. *City of Omaha,* 216 Fed. 848, 851, 856 (C.C.A.-8); *United States* vs. *Reed,* (C.C.A.-2), 274 Fed. 724; *United States* vs. *Harris,* (C.C.A.-8), 286 Fed. 910.]

F. In view of those circumstances, and of the District Court's then existing duty in that regard, the insertion in the foreclosure decree of the last sentence of the concluding paragraph, here in question, expressly directing that "the present term of this court is continued",

> "For the purpose of making any further order or decree in relation to any matter arising in connection with this decree",

appears to have been very proper and fitting, and an effective way to effectuate that purpose, and to reserve to the District Court the power at its succeeding term to conform its decree to the ultimate decision of the Circuit Court of Appeals as to the validity of the Puerto Rican statute.

G. That such was actually the intention of that reservation, as it was understood by the parties at the time of the entry of the foreclosure decree, appears to be strongly indicated by the fact that The People of Puerto Rico did not take any appeal from that decree.

Except for such an understanding, at that time, of the purpose and effect of that reservation, it appears to be inconceivable that an appeal would not have been taken

by The People in such an important case involving such a substantial amount of the public revenue. On the other hand, in view of that understanding of the purpose and effect of this reservation in the decree, there would seem to have been no reason for an appeal at that time, simply to duplicate the question already before the Circuit Court of Appeals in the *Federal Land Bank* cases.

POINT II

The District Court's own interpretation of its decree, at a subsequent term, carries no especial weight.

A. The Circuit Court of Appeals relies (R. 116-117; 116 F. (2d) at p. 381) on the District Court's own interpretation of the foreclosure decree, in the District Court's order of January 31, 1940 (R. 89) denying the petition for reconsideration. The Circuit Court says: "We accept the District Court's interpretation of its own decree". But, manifestly, after the end of May term, 1939, at which the decree was entered, the District Court either (a) retained power over it; or else (b) it did not. If it did; then, plainly, it was its duty so to modify it as to make it conform to the statute of Puerto Rico whose validity had been established by the decision of the Circuit Court of Appeals in the *Federal Land Bank* cases. If it did not; then its interpretation of its own former decree at a former term is entitled to no more weight than is that of any other competent lawyer, or of any one of the parties to the case. This seems plain.

B. The District Court's interpretation is not supported by the language of the decree; particularly in view of the circumstances under which the decree was entered, as above outlined. The District Court in stating its opinion in its order of January 31, 1940, denying reconsideration, says simply (R. 89):

> "Such a decree is clearly a final one for it determines the rights of the parties so that nothing is left to be done but the execution of its provisions. Affirm-

> ance of such a decree by the appellate court would end the suit and execution of the provisions thereof by this court would be all that remained to be done. *The reservation in the decree for further directions simply related to such execution and cannot be availed of as rendering it less final or as leaving open points expressly decided by it at the time it was entered.* (*Italics supplied*)

C. But this interpretation,—if it is to be understood as relating to the final sentence of the decree, above quoted (*ante*, pp. 4, 22),—really does violence to the language of the reservation, as well as ignoring the circumstances under which it was inserted in the foreclosure decree. It overlooks the fact that the last sentence of the paragraph "O" does not on its face refer back to the first sentence at all, but appears to be independent and intended to deal with something else.

D. The first sentence, on the other hand, appears to be complete in itself, and not to need anything added to it, so far as relates to the execution of the decree. It provides in quite usual form, that,

> "All questions, issues, matters and things not hereby disposed of are hereby reserved by the court for its further adjudication,"

and further, likewise in quite usual form,

> "and any party to this cause may at any time apply to the court for further relief at the foot of this decree in respect of any matters not herein specifically provided for".

Thus those two clauses of the first sentence comprise in themselves,—and complete,—all the usual and necessary provisions for reserving to the court the power to give further directions in relation to the execution of the decree,—the kind of reservation with relation to which the Circuit Court of Appeals for the Second Circuit said in one of the cases cited in the opinion of the Circuit Court of Appeals in the present case (R. 117; the case of

American Eng. Co. vs. *Metropolitan By-Products Co.*, 275 Fed. 40, 42):

> "But leave to apply at the foot of the decree for further relief is very usual, and does not prevent the decree from being final, or the order being appealable."

That kind of reservation is one thing. It is usual; and it was embodied in the first sentence of paragraph "O" of the foreclosure decree in this case (R. 85). That sentence is complete in itself; nothing needed to be added to it, to accomplish its purpose.

E. Then what is the meaning of the *unusual* provision contained in the final sentence inserted in the present decree, following that quite usual provision which had already been made in the first sentence? Can this unusual final sentence simply be disregarded as meaningless, and as not adding anything whatever to the usual reservation contained in the first sentence of the paragraph? That is the way the District Court treated it, in its interpretation as above quoted. And the Circuit Court of Appeals followed the District Court here. But must it not be interpreted as intended to mean something? And if so, in view of the circumstances under which it was entered, must it not be construed as intending to mean,—exactly and literally what it says,—that the "present term" is "continued", "For the purpose of making any further order or decree *in relation to any matter arising in connection with this decree*"?

F. That is a wholly different matter from the customary reservation embodied in the first sentence of the paragraph. This final sentence is unusual. It must have been intended to mean something. It is well fitted to enable the District Court to retain the power over the decree which was necessary to enable it to do its plain

duty [14] to modify the decree in the event that the Puerto Rico statute should ultimately be sustained by the Circuit Court of Appeals in the then pending *Federal Land Bank* cases.

G. It is believed that effect should be given to it; and that it should be interpreted, in accordance with its plain language, to have this effect, and to reserve the necessary power to the District Court.

POINT III

The cases cited by the Circuit Court of Appeals are not to the contrary.

The Circuit Court of Appeals says with reference to the District Court's narrow interpretation (*ante*, pp. 23-24; order of January 31, 1940, R. 89) of the final sentence of paragraph "O" of the foreclosure decree, that (R. 116; 116 F. (2d) at p. 381):

> "Somewhat similar phraseology in decrees in other cases has been similarly interpreted",

citing the cases already listed (*ante*, Footnote 8, p. 12).

---

[14] The Circuit Court of Appeals for the Eighth Circuit said in relation to a case where its interpretation of a franchise had been overruled by a decision of this Court interpreting the same franchise in other litigation (*Omaha El. & P. Co.* vs. *City of Omaha, supra*, 216 Fed. 848, 851, 856):

> "If we have the power to revise our decree and issue a mandate in harmony with that of the Supreme Court, *it is plainly our duty to do so.* Thus we should not only protect the rights of the plaintiff as a litigant, but *as a matter of public policy* to preserve the orderly administration of justice and avoid an unseemly conflict of judicial mandate (at p. 851). * * *
>
> "* * * Certainly our duty is plain. We ought to harmonize our decree and mandate with that of the Supreme Court" (at p. 856). (*Italics supplied*)

See also: *John Simmons Co.* vs. *Grier Bros. Co.*, 258 U. S. 82, 91-92.

But those cases do not bear the Circuit Court of Appeals out in this respect. They are all cases, simply, of the usual reservation of a right to the parties to apply at the foot of the decree for further relief or directions in relation to carrying the decree into execution. *None of them relates to a provision such as that here involved,* in the final sentence of the present foreclosure decree, continuing the term,—or making any reservation of power generally,—as is here done, "For the purpose of * * * *any matter arising in connection with this decree*". Nothing of the kind whatever.

Thus, for example, in *Mayer* vs. *White, supra,* 12 F. (2d) 710, the reservation was simply (at p. 113):

> "The court reserves jurisdiction of this cause for the making of such orders as the continuing preservation of the property and the protection of the parties may require."

That reservation was held (at pp. 713-715) not sufficient to authorize opening up that portion of the decree which had definitely fixed the amount to be paid to one party thereunder, and had made it a charge on his interest in the partnership property.

The reservations in the decrees in *Lewisburg Bank* vs. *Sheffey,* 140 U. S. 445, 449, 452, and in *American Engineering Co.* vs. *Metropolitan By-Products Co.,* 275 Fed. 40, 42, cited by the Circuit Court of Appeals, were simply in the usual form reserving the power to give further directions or orders in the execution of the decree. [*Confer, ante,* p. 25, quotation from the *American Engineering Co.* vs. *Metropolitan By-Products Co.* opinion]. The case of *Kiehn* vs. *Dodge County,* 19 F. (2d) 503, likewise cited, (R. 117; 116 F. (2d) at p. 381) appears not to be in point at all. In that case the Circuit Court of Appeals for the Eighth Circuit simply held (at p. 504) that the judgments in which were contained the reservation, there sought to be relied upon, were not the final judgments in the case at

all; but that other judgments, later entered, were really the final judgments in the case.

POINT IV

"Error apparent" on the face of the foreclosure decree.

A. There is, on the face of the foreclosure decree itself, "error apparent" within the meaning of Lord Bacon's First Ordinance in Chancery; since, upon the face of the decree itself, it appears that it is in "violation of some statutory enactment",—viz., of the Puerto Rican statute of July 16, 1936, Section 5 (Appendix III, *infra*, pp. 52-53), which expressly gives priority to the deferred real estate taxes. *Hoffman* vs. *Knox*, 50 Fed. 484, 490 [15] (*Fuller, Ch. J.*, sitting at the Circuit); citing 2 Daniell, Ch. Pr. (5th Ed.) *1577; *Perry* vs. *Phelips*, 17 Ves. *174, *177 (*Lord Eldon*); Story, Eq. Pl., Sec. 405.

CHIEF JUSTICE FULLER said (*Hoffman* vs. *Knox, supra*, 50 Fed. at p. 490):

> "To sustain a bill of review for error of law apparent, the decree complained of must be '*contrary to some statutory enactment*, or some principle or rule of law or equity recognized and acknowledged, or settled by decision, or be at variance with the forms and practice of the court.' 2 Daniell, Ch. Pr. (5th Ed.) *1577. The general rule is that such a bill does not lie to correct a mere error, which would, in effect, render it nothing more than a substitute for an appeal." (*Italics supplied*)

So likewise JUDGE SANBORN afterwards said in *Hill* vs. *Phelps* (8th Circuit) 101 Fed. 650, 652:

> "The error of law which will maintain a bill of review *must consist in the violation of some statutory*

---

[15] One of the cases cited here by the Circuit Court of Appeals itself; R. 116; 116 F. (2d) at p. 380.

enactment, or some recognized principle or rule of law or equity, or of the settled practice of the court". (*Italics supplied*)

In the same opinion he had earlier said (*ib.*, at p. 651):

"The purpose of a bill of review is to obtain a reversal or modification of a final decree. There are but three grounds upon which such a bill can be sustained. They are (1) error of law apparent on the face of the decree and the pleadings and proceedings upon which it is based, exclusive of the evidence; (2) new matter which has arisen since the the decree; and (3) newly-discovered evidence which could not have been found and produced, by the use of reasonable diligence, before the decree was rendered. No departure has ever been made from the rules applicable to such a bill, which were declared by LORD CHANCELLOR BACON, in the first of his ordinances in chancery, in these words:

'No decree shall be reversed, altered, or explained, being once under the great seal, but upon bill of review. And no bill of review shall be admitted, except it contain either error in law, appearing in the body of the decree, without further examination of matters in fact, or some new matter, which hath arisen in time after the decree, and not any new proof, which might have been used, when the decree was made. Nevertheless, upon new proof, that is come to life after the decree was made, which could not possibly have been used at the time when the decree passed, a bill of review may be grounded by the special license of the court, and not otherwise.' "

B. While the occasions for bills of review for "error apparent" are rare, and in most of the instances in which review in that manner has been sought it appears that the case was not really a proper one for a bill of review,[16] yet

---

[16] *Confer* the frequent citations of *Hoffman* vs. *Knox* and the cases following it, in State as well as federal courts, listed in Shepard's Citations. And *Confer*, also, *John Simmons Co.* vs. *Grier Bros. Co., supra,* 258 U. S. 82, 91-92.

the rule has never been questioned, nor that "the violation of some statutory requirement" is a ground for a bill of review, without leave of court.

C. In the present case there exists the direct violation of the statutory requirement; and the violation is apparent on the face of the foreclosure decree. As hereinbefore pointed out, it appears on the face of the decree that the District Court deliberately refused to obey the Puerto Rican statute as to the deferred tax priority. The District Court's only authority for this was its own prior decisions, a few months earlier, in the *Federal Land Bank* cases; which were then pending on appeal, undecided, in the Circuit Court of Appeals for the First Circuit; and in which, shortly afterwards, the District Court was overruled [*ante*, pp. 4-5]. This direct violation of a statutory requirement is within the exact definition of the grounds for a bill of review as laid down in all the books.[17]

D. Plainly the motion for reconsideration of the foreclosure decree, filed by The People of Puerto Rico (R. 86) promptly upon the Circuit Court of Appeals' reversal of the District Court's judgments in the *Federal Land Bank* cases, **and likewise its renewal by the objections** to the approval of the receiver's final report and his discharge (R. 98-99), may be considered as, in effect, a bill of review, or as a petition in the nature of a bill of review, and, in that light, as invoking the undoubted power existing in the District Court to review the foreclosure decree for error apparent on the face of the decree.

---

[17] In *Hoffman* vs. *Knox, supra*, CHIEF JUSTICE FULLER held (50 Fed. *supra*, at pp. 490-492) that *the converse of this situation*,—the fact that the decree there had followed and obeyed a State statute which the State Supreme Court later on held to be unconstitutional and invalid,—was not within the rule, and was not in itself sufficient ground for a bill of review. But it is noteworthy that, even in that reversed situation, the Chief Justice put his opinion, partially at least, upon the ground that the as-

POINT V

There was likewise "error apparent" on the face of the District Court's order of January 31, 1940, in holding the Puerto Rican statute of July 16, 1936, not applicable to this case.

As hereinbefore pointed out, the District Court, as a second ground for denying petitioner's motion for reconsideration of the foreclosure decree, held (R. 90-91) that the Act of July 16, 1936 (Appendix III, *infra*, pp. 51-55) was not applicable to this case, and that it did not provide priority for the deferred taxes here. The District Court there erroneously held that the Act of August 24, 1933 (Appendix III, *infra*, pp. 50-51) was still in force and governed the relative priorities of the taxes and the mortgages on October 20, 1936, the date the receiver went into possession. **The District Court's error, in thus holding the earlier Act of August 24, 1933, applicable, plainly appears on the face of the order itself.** The order says (R. 90) that **October 20, 1936,** is the date the receiver went into possession of the property. As hereinbefore pointed out (*ante*, pp. 6-8), **on that date the Act of July 16, 1936, enacted more than three months previously, had already taken effect,** immediately on its enactment, under its emergency clause (Sec. 17, Appendix

---

sailing bondholders had really assented to the decree, and that (50 Fed. at p. 491): "It is a general rule that a bill of review will not lie to impeach a consent decree".

That reversed situation,—the court's *obedience* to an afterwards questioned statute,—is, however, *a very different thing from* a lower court, as here, *refusing obedience*, and deliberately disregarding a valid statute. If, as here, it is afterwards established by the authority of a higher court that the lower court was wrong in this, it comes pretty close to what is called "jurisdictional error" in the military law. Going so close to trespassing upon the boundary line between the judicial and the legislative powers, it would seem that **comity between the two powers,** and the orderly administration of government, would require the enforcement of the ancient chancery ordinance of Lord Bacon, allowing the opening up of such a decree, for "error apparent."

III, *infra*, p. 55). Even in the absence of the emergency clause it would still have gone into effect on October 14, 1936 [six days before the receiver's appointment] in regular course, ninety days after its enactment, under the provisions the sixth paragraph of Section 34 of the Organic Act for Puerto Rico (Act of March 2, 1917, c. 145, 39 Stat. 951, 961). The District Court's error is manifest. It is clearly "error apparent" on the face of the order.

POINT VI

In conclusion.

On the whole record it appears that there is here a plain disregard by the District Court of the provisions of a valid statute of Puerto Rico, the Act of July 16, 1936, which expressly secured priority to the deferred real estate taxes. The taxes had been deferred by the Treasurer, under the provisions of that Act, upon the applications of the receiver acting under the directions of the District Court itself. By the disregard of that statute a substantial amount of the public revenue of the Government of Puerto Rico has been withheld from its Treasury. The foreclosure decree of September 18, 1939, at the May term, was plainly erroneous, and contained "error apparent" on its face in respect of this violation of the statute. Both because of this error apparent on its face, and also because of the power reserved by the final sentence of the last paragraph "O" of the decree continuing the term for the purpose of "making any further order or decree in relation to any matter arising in connection with this decree", the District Court possessed, at the following term, the November term,—and throughout the whole of that term,—the power to correct this plain error. Possessing that power, the District Court should have exercised it; and should have corrected the foreclosure decree in this respect, either upon petitioner's motion for recon-

sideration filed promptly after the announcement of the Circuit Court of Appeals' decision sustaining the validity of the statute, or else upon the objections of the petitioner, at the same November term, to the approval of the receiver's final report and the receiver's discharge.[18] The District Court's disregard of the statute, in the foreclosure decree, and its refusal to correct the decree afterwards at the following term when it still possessed the power to do so, and after its plain error had been called to its attention, constituted such a violation of the plain statutory law of Puerto Rico, and such an injury to the public Treasury, and such a departure from the accepted

---

[18] The Circuit Court of Appeals says, as above quoted (*ante*, pp. 12-13; R. 118; 116 F. (2d) at p. 381), that:

> "* * * the relative priorities of the Bank and the insular government in the mortgaged properties were determined by the decree of September 18, 1939, and had become *res judicata*. These issues could not be raised again at the later stage in the receivership when the court was considering whether to approve the receiver's final report." (*Citing the cases listed in footnote* 9, *ante*, p. 13).

The cases the Circuit Court cites go, however, only to the one point that, after the expiration of the term at which a final decree or judgment is entered, the court [in the absence of any reservation of jurisdiction in the decree, and in the absence of any "error apparent" on its face] loses control over it, and may not modify it at a subsequent term.

It is not believed that the Circuit Court of Appeals meant to intimate that the mere fact that the question was raised in the present instance by the petitioner here upon objections to the approval of the receiver's final report made, in itself, any difference in the court's jurisdiction. The cases it cites make no reference to anything of that kind. Manifestly, if the District Court possessed the power, at the November term, to reconsider the ques-

and usual course of judicial proceedings,—and the Circuit Court of Appeals' affirmance of the District Court's orders in this respect constituted such a sanctioning of such error and of such departure by the lower court,—as to call for an exercise of this Court's power of supervision by the issuance of the writ of certiorari in this case.

Respectfully submitted,

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

GEORGE A. MALCOLM,
Attorney General of Puerto Rico,
NATHAN R. MARGOLD,
Solicitor for the Department of the Interior,
Of Counsel.

---

tion of the tax priorities as fixed in the foreclosure decree at the preceding term, then *it possessed that power during the whole of the November term;* and, so far as the court's jurisdiction was concerned, it was immaterial whether its exercise was invoked by the petitioner upon the objections to the receiver's final report, or upon any other motion. The petitioner thought it fitting to invoke it by objections to the approval of the receiver's final report, because that apparently was substantially the end of the litigation in the District Court; and was, of course, still at the November term, 1939, the term immediately following the May term at which the foreclosure decree had been entered, and while the parties were still before the court and subject to its jurisdiction.